

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA**

In re:)	
)	Chapter 11
MERCY HOSPITAL, IOWA CITY, IOWA, <i>et al.</i> ,)	
)	Case No. 23-00623 (TJC)
Debtors.)	
)	Jointly Administered
)	
)	Related to Docket Nos. 26, 58, 435
)	

**DEBTORS' STATEMENT AND RESERVATION OF RIGHTS REGARDING
NOVEMBER 6, 2023 HEARING ON THE DEBTORS' USE OF CASH COLLATERAL
AND THE DEBTORS' PROPOSED SALE TO THE UNIVERSITY OF IOWA**

Mercy Hospital, Iowa City, Iowa ("Mercy" or the "Hospital") and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), hereby file this statement and reservation of rights with respect to (a) the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Use of Cash Collateral and Granting Adequate Protection, (II) Scheduling a Final Hearing on the Use of Cash Collateral, and (III) Granting Related Relief* [Docket No. 26] (the "Cash Collateral Motion") and (b) the *Debtors' Motion for Entry of Order (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Provide Stalking Horse Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving the Assumption and Assignment Procedures and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and*

(III) *Granting Related Relief* [Docket No. 58] (the “Bidding Procedures Motion”)¹ and respectfully state as follows:

RESERVATION OF RIGHTS

1. Since the outset of these Chapter 11 Cases, the Debtors have been resolute in their ongoing approach to maintain continuity of care for patients, ensure employees are paid, and otherwise maintain the operations to bridge to a value-maximizing sale. This has not been easy during these Chapter 11 Cases, particularly given the intense media scrutiny and the various stakeholders that have held disparate views on what is best for the future of Mercy Hospital.

2. In order to best achieve these goals, however, the Debtors have worked to engage constructively with the Bondholder Representatives on a case budget to, above all else, ensure continuity of care. This includes payment of payroll for approximately 1,100 employees, funding for necessary medical supplies and other critical operating expenses required of a fully-functioning acute care hospital and accompanying clinics. And the Debtors have been highly successful in this regard – the Debtors are outperforming the agreed-upon budget, census is up, meaning that the Debtors are taking care of more patients, and the Debtors’ employees now see a successful end in sight with the proposed transaction to the University of Iowa (the “University”).

3. In light of these aims, the Debtors now stand on the verge of seeking to obtain the most significant relief yet in these Bankruptcy cases at the upcoming hearing on November 6, 2023 – approval of the sale to the University. But this was far from a linear path. Beginning with the filing of a receivership action by the Bondholder Representatives which precipitated the emergency filing of these chapter 11 cases, the Bondholder Representatives threw out many

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed in the Cash Collateral Motion or the Bidding Procedures Motion, as applicable.

obstacles in front of the Debtors. These included, among other things, a motion to appoint an examiner, objections to the retention of three different estate professionals, numerous depositions and extensive discovery, and most recently, concerning disagreements during the auction process. Yet, the Debtors remained steadfast in their efforts to consummate the transaction that it set out to achieve at the outset of these cases. And while the Debtors—through extensive efforts by their management team, their advisors, and their board—ultimately worked tirelessly to achieve consensus by resolving each of these potential hurdles to bring stability to their operations rather than litigate, this has come at a steep cost to the Debtors’ estates. These costs are both quantitative and qualitative, both in terms of increased professional fees required to respond to each of these issues created by the Bondholder Representatives, as well as the need to continually assuage an employee base that has become increasingly concerned about the future of Mercy Iowa City.

4. Notwithstanding these significant roadblocks, fortunately, the Debtors and the Bondholder Representatives have been able to reach consensus on a form of final order approving cash collateral that not only ensures the ongoing funding necessary to bridge to the sale, but most importantly, allows the Bondholder Representatives to not object to the proposed sale. However, in light of the fact that their agreement to support cash collateral was required in order to reach agreement on the overall sale transaction, the Debtors reserve all rights to withdraw their support for the proposed form of order on cash collateral in the event that the Bondholder Representatives object or otherwise impede approval of the sale transaction.

5. In a reservation of rights filed earlier today [Docket No. 435] (the “Bondholder Reservation of Rights”), however, the Bondholder Representatives made certain statements to which the Debtors believe are false or misleading, and thus, the Debtors wish to correct the record. By way of example, the notion that the Debtors have depleted cash at a “tremendous rate”

flies in the face of the fact that the Debtors have maintained operations in accordance with (and actually outperformed) the budget **approved by** the Bondholder Representatives, with any corresponding delays directly attributable to the Bondholder Representatives' actions to delay the sale process and otherwise impede the Debtors' progress at various points. What the Bondholder Representatives mischaracterize as "consuming collateral" in their Bondholder Reservation of Rights is actually approximately \$18 million in payroll and related employee costs, as well as \$25 million in other operating costs necessary to care for their patients over a three-month period, all of which are vital to maintain operations and which would have been spent whether or not Mercy Hospital was in chapter 11.

6. Notwithstanding these mischaracterizations and misleading statements, the Debtors remain optimistic that the November 6 hearing will be largely, if not entirely consensual. In the event that the Bondholder Representatives no longer support the sale transaction, however, the Debtors reserve all rights in connection therewith, including to put forward evidence to rebut these and other assertions.

Dated: Cedar Rapids, Iowa
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Certificate of Service

The undersigned certifies, under penalty of perjury, that on this November 2, 2023, the foregoing document was electronically filed with the Clerk of Court using the Northern District of Iowa CM/ECF and the document was served electronically through the CM/ECF system to the parties of this case

/s/ Roy Leaf